

and voting, but must have 72 votes. It is for this reason that the Chair desires all delegates to remain in the chamber. The Clerk will please ring the quorum bell and the Sergeant-at-Arms will please have all delegates in the corridor returned to the chamber.

The question arises on the motion to reconsider the vote by which Committee Recommendations R&P-1 and R&P-2 were adopted on second reading so that the vote by which Amendment No. 2 was rejected may be reconsidered. In other words, it is necessary to put to you two successive motions for reconsideration.

Although there are two questions, the vote will be one vote on the motion to reconsider. The motion is a motion of Delegate Dukes. The Amendment No. 2 is the amendment to add the section dealing with juries being the judge of the law as well as the fact in criminal cases so you should have before you Amendment No. 2 to Committee Recommendations R&P-1 and R&P-2 as amended by Style Committee Report S&D-9. It is the amendment that says that in the trial of all criminal cases the jury shall be the judges of the law as well as the fact except that the court may pass upon the sufficiency of the evidence to sustain a conviction.

The Chair recognizes Delegate Dukes to speak to the motion.

DELEGATE DUKES: Mr. President, I have no desire to debate the matter at great length. I ask only that the body recall that the vote by which the amendment failed was 60 to 60, and it failed because of the tie, the same problem that has plagued us throughout the day on both sides of the labor question.

Since there were 20 delegates not present, since a large group of the body thought it was serious, I asked to have the matter reconsidered at a time when everybody was here. I would appreciate your giving us an opportunity to take a vote on the entire problem. I have nothing further to say.

THE PRESIDENT: Is there any further discussion?

Delegate Powers.

DELEGATE POWERS: I am concerned about this both in substance and in the effect that the reconsideration will have on the Convention. I have remained silent during the time that this subject has been debated, and I believe this will be the seventh vote we have taken directly or indi-

rectly on this subject. I think I have some credentials which would justify expressing an opinion. I figured out over the weekend that as a trial lawyer for 27 years and as a judge for six years I have tried about 350 criminal jury cases. Of course, as a lawyer, your clients are interested more in being acquitted than they are in justice, but judges are concerned with seeing that a fair trial is afforded and that justice is done.

I do not believe we have a high grade of justice and even-handed justice by having the jury be the judge of the facts as well as the law.

I would like to point out to the members, to the delegates here, that when a judge gives the instructions on the law, he first has conferred with counsel on both sides and in most cases there is no exception to the instructions that are given. He defines the crime if it needs to be defined and then very importantly he instructs the jury that the defendant is entitled to a presumption of innocence and that the burden of proof is on the State to prove beyond a reasonable doubt the defendant's guilt and the existence of every element of the crime otherwise their verdict must be not guilty.

I cannot believe that when the jury is then told that they may completely disregard this instruction and determine the law for themselves, this meets the protection of the federal Constitution. It does not afford due process.

I agree with Delegates Henderson and Sherbow who earlier have said that they were of the opinion that this provision, if it remains in our constitution, will be declared unconstitutional by the Supreme Court of the United States.

Now, in addition to the substance, I would like to point out to the delegates that our time is growing short. As I say, we have had a number of votes on this. We still have many important matters to consider. We are soon going to reach a point where the more time we spend on one thing, the less we will be able to spend on another. The lack of progress we have made recently is becoming alarming, and I think that those who are in favor of this should take defeat with good grace, that we should end this question once and for all by voting no on this question of reconsideration.

I will be glad to yield to Delegate Dorsey.

DELEGATE DORSEY: I would like to ask if the Supreme Court has not recently refused to grant certiorari when this question was before it.